



Request for Proposals

for

Streamflow Rehabilitation Assistance Program (StRAP) Stream Debris Removal FY23

Issue Date: February 7, 2023

Due Date: February 20, 2023

1. INTRODUCTION

Brunswick County is soliciting sealed proposals for contractors to perform the removal of stream debris for the Brunswick County Streamflow Rehabilitation Assistance Program (“StRAP”) - Round 1.

2. PROJECT OVERVIEW

This project consists of sections of the following streams located in Brunswick County:

- Morgan Branch
- Scotts Branch
- Cool Run
- Shallotte River affected by the February 2021 tornado damage
- Portions of Willet Branch
- Swain Branch
- Upstream portion of Goose Creek

Permits of Entry have been requested for all sites; however, the number of project sites is subject to change due to non-receipt of executed Permits of Entry. Additionally, Brunswick County reserves the right to exclude any of the aforementioned project sites from the Scope of Work at any time in its sole and absolute discretion. The contractor will only be compensated for the work completed within this Scope of Work. The work to be performed includes stream debris removal as defined by Woody Debris Removal Guidelines, starting on page B-1 of the document entitled “Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat,” link provided below. Brunswick County will require all debris removed from the channel to be transported outside of the 100-year floodplain as required by the “Streamflow Rehabilitation Assistance Program” contained in North Carolina General Statutes § 139-65(d).

3. SCOPE OF WORK

Brunswick County has established the following objectives for this project. Any changes to the specifications or Scope of Work will be made in the form of an Addendum to this Request for Proposals and will be supplied to all known prospective contractors and posted on the Brunswick County website. Contractors will be responsible for ensuring that they have all addenda. Brunswick County may negotiate and refine the final Scope of Work with the selected contractor. Brunswick County reserves the right to negotiate additional services with the selected contractor at any time after the initial contract award.

- The contractor is required to submit a project schedule showing the sequence of all work to be performed.
- The contractor shall provide an itemized bid proposal. Each project site shall have an individual cost, along with a total project cost.
- The contractor shall use the North Carolina Department of Transportation right of way for ingress/egress to project locations.

- The limits (upstream and downstream) of stream debris removal from the stream corridor will be flagged and/or marked by Brunswick County staff. Estimated stream debris removal limits are subject to change.
- The contractor must submit written weekly progress reports by project number to Brunswick County staff with each report due before 9:00 am ET each Tuesday, continuing until the project is complete and the final project report is approved. The weekly progress report is required even if no activity has occurred for the week and no reimbursement is requested for the week. The weekly report shall include a narrative summary of the work completed each week, a summary of the total project to date and a summary of expenditures for the week and total project expenditures.
- The contractor must complete stream debris removal activities including cutting and removing downed trees, partially downed live trees that are leaning at less than 45 degrees, broken tops and woody debris that impede or potentially impede water flow in the streams and tributaries.
- The contractor shall ensure that all work is completed in accordance with the following documents:
 - USACE Incremental Effects of Large Woody Debris Removal on Physical Habitat:
<https://files.nc.gov/ncdeq/Water%20Resources/files/grants/Minimum%20Criteria%20-%20Incremental%20Effects%20of%20LWD%20Removal%201992.pdf>
 - NRCS Conservation Practice Standard 326 Clearing and Snagging:
https://www.ncagr.gov/SWC/watershed/documents/NRCS_ClearingandSnagging326.pdf
 - NC Wildlife Resources Commission Snagging & Clearing Guidance:
<https://www.ncagr.gov/SWC/watershed/documents/NCWRCSnaggingandClearingGuidance.pdf>
 - In addition, all debris shall be removed from the 100-year floodplain as required by the “Streamflow Rehabilitation Assistance Program” contained in North Carolina General Statutes § 139-65(d).
- The NCDOT right-of-way will serve as ingress/egress to project locations. Coarse Woody debris (CWD) greater than two (2) inches in diameter at one end shall be cut in lengths of at least ten (10) feet unless other arrangements are made with the inspecting officer. Disposal of woody debris will be taken to the Brunswick County Landfill for processing.
- The contractor shall commence work within **seven (7) days** of the effective date of the contract and shall complete all project work within the time frame of **one hundred and twenty (120) days** from the effective date of the contract.
- Brunswick County staff will conduct regular site visits to ensure the quality of work performed. North Carolina Department of Agriculture and Consumer Services Division of Soil and Water staff will conduct the final inspection at each stream segment as defined by the scope for final approval. Brunswick County will not release payment to the contractor until the completed work has been approved by Brunswick County staff and NCDA&CS Division of Soil and Water staff.

- The contractor shall provide a copy of all weigh tickets from the Brunswick County Landfill to Brunswick County.
- A final comprehensive project report shall be provided to the Brunswick County's project coordinator following the completion of all work. The final comprehensive project report shall include a narrative summary of the work completed and a summary of expenditures for the total project. The final report shall be submitted within thirty (30) days of project completion. A Division of Soil and Water representative will authorize project completion and ensure quality guidelines are met.
- Complete all required work as outlined herein.
- The contractor shall follow all Manual on Uniform Traffic Control Devices ("MUTCD") guidelines. All projects will follow NCDOT standards (gravel construction entrances, etc.) for work within the NCDOT right-of-way. For more information, please visit: <https://mutcd.fhwa.dot.gov/>

Definitions of Terminology Related to the Scope of Work for this Project:

- **Stream corridor:** The stream corridor limits are measured from USDA NCRS standards. The contractor shall follow these limits per project site specifications.
- **100-Year Floodplain:** "100-year floodplain" means any area subject to inundation by the one percent (1%) annual chance flood event, as indicated on the most recent Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program.
- **Coarse Woody Debris:** intact downed and partially downed dead trees / tree debris greater two (2) inches in diameter at one end **Stream debris removal:** Includes, without limitation, cutting and removing downed trees, broken tops, and woody debris. Woody debris two (2) inches in diameter and greater shall be cut in lengths of at least ten (10) feet unless other arrangements are made with the inspecting officer. Remove all partially downed trees that are leaning at less than a forty-five (45)-degree angle to the adjacent grade. All work shall be completed according to the Woody Debris Removal Guidelines.
- **Hauling and Disposal:** Debris removal work located outside of the 100-year floodplain shall be placed a minimum of twenty (20) feet from the edge of the stream in a manner as to reduce the likelihood of the debris re-entering the stream corridor. The contractor shall remove woody debris from the project area located within the 100-year floodplain and dispose of same at the Brunswick County Landfill. All weight tickets shall be provided to Brunswick County.

Project site descriptions and locations are as follows. All project site descriptions and locations are subject to change. Please review the estimated work below.

Stream Name	Approximate Stream length (Ft)	Segment located within 100- floodplain BASED ON FEMA FIRM MAP (Ft)	Job Description	Township	Y (Lat)	X (Long)
Morgan Branch	8000	8000	Stream debris removal	Leland	34.185415	-78.070700
Scotts Branch	7100	7100	Stream debris removal	Supply	34.000143	-78.226017
Cool Run	7600	1000	Stream debris removal	Shallotte	33.954832	-78.465659
Shallotte River	3,000	0	Stream debris removal	Shallotte	33.948036	-78.392003
Willet Branch	3,100	1,400	Stream debris removal	Winnabow	34.100272	-78.086272
Swain Branch	2,900	0	Stream debris removal	Winnabow	34.079616	-78.052139
Goose Creek	1,900	1,900	Stream debris removal	Ocean Isle Beach	33.909044	-78.39647

4. PROPOSAL DEADLINE AND SUBMISSION REQUIREMENTS

4.1 All sealed proposals must be received by Brunswick County by 4:00 p.m. ET on February 20, 2023.

4.2 All sealed proposals must include the following:

- The proposal title and due date and time.
- A cover letter/letter of intent on contractor's letterhead, signed by an authorized representative of contractor, expressly agreeing to Brunswick County's terms and conditions contained in this Request for Proposals and its attachments.
- The contractor's name or company name, address, and telephone number.
- The name, address and telephone number of company representatives with the authority to answer questions or provide clarification regarding the proposal's contents.
- A list of key personnel to be assigned to perform the services and each person's qualifications. Personnel should possess relevant and diverse knowledge and expertise in their respective fields.

- The names of any and all subcontractors expected to perform services in connection with the project and their qualifications. Include the estimated percentage of work that each subcontractor is expected to perform. **Brunswick County reserves the right to accept or reject any proposed subcontractor.**
- A detailed Form of Proposal in substantially the form attached hereto and incorporated herein by reference.
- A full description of services and processes that will be implemented and ongoing to complete the project in the most efficient, timely and comprehensive manner. The description should include a detailed implementation plan and project schedule outlining the primary tasks, estimated hours, responsibility, major deliverables and timing, including an estimated start date. Additional project deliverables are set forth below.
- Any assistance requirements from Brunswick County.
- A detailed company description and history, including the areas of expertise related to the project.
- A reference list of at least three (3) current projects or projects completed within the past twenty-four (24) months for projects of similar size and scope, including the name and telephone number of a contact person for each reference listed.
- Certificate of Insurance as evidence that contractor meets the County's Minimum Insurance Requirements attached hereto.

Contractors shall provide documentation sufficient to clearly demonstrate that their firm meets or exceeds the requirements set forth in this Request for Proposals. Failure to provide such documentation may result in the proposal being deemed non-responsive.

In addition to the foregoing, Brunswick County reserves the right to request financial information for any contractor, in order to support the viability of the contractor.

Those interested should submit one (1) hard copy (mailed or hand delivered) of the sealed proposal. Sealed proposals may be mailed or hand delivered:

Mail: Brunswick County Soil and water Conservation District
Attn: Elliot Swain
P.O. Box 249
Bolivia, NC 28422

Hand Delivery: Brunswick County Soil and water Conservation District
Attn: Elliot Swain
10 Referendum Dr. Building F
Bolivia, NC 28422

Sealed proposals must be received no later than February 20, 2023 at 4:00 p.m. ET. Brunswick County will not be responsible for the failure of any mail or delivery service to deliver a proposal prior to the stated date and time. Regardless of the manner of submission, any proposal received after the stated date and time will not be considered. Incomplete proposals or proposals inconsistent with the required format may be disqualified from consideration.

5. EXPENSES

Brunswick County will not be responsible for any costs or expenses incurred by the contractor in submitting a proposal or for any other activities associated with this procurement. Further, Brunswick County reserves the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement even if the Board of Commissioners has formally accepted the recommendation.

6. RIGHT TO SUBMITTED PROPOSALS AND SUPPORTING DOCUMENTS

All written correspondence, proposals and supporting documents received by Brunswick County in connection with this Request for Proposals will become the property of Brunswick County. Brunswick County reserves the right to use any ideas in a proposal or supporting documents regardless of whether the proposal is selected.

7. QUESTIONS/ADDENDA

Questions or requests for further information regarding this Request for Proposals shall be submitted in writing to the attention of Elliot Swain at elliot.swain@brunswickcountync.gov no later than February 14, 2023 at 4:00 pm ET. A copy of all questions, further clarifications and answers will be made in the form of an addendum to this Request for Proposals and will be provided to all known contractors and posted on the County's website. Contractors will be responsible for ensuring that they have all addenda.

Contractors are expressly prohibited from contacting any Brunswick County official or employee regarding this Request for Proposals, except in the manner noted in this section. A violation of this provision is grounds for the immediate disqualification of the contractor.

Any changes to the specifications or scope of work will be made in the form of an Addendum to this Request for Proposal and will be supplied to all prospective contractors and posted on the County's website.

8. FORM OF AGREEMENT

In addition to the terms and conditions contained in this Request for Proposals, by submitting a proposal, contractor, if selected, agrees to enter into and be bound by the provisions of a Services Agreement in substantially the form attached hereto and incorporated herein by reference. To the extent that any of the terms of this Request for

Proposals and the terms of the Services Agreement conflict, the terms of the Services Agreement shall prevail. No work shall commence until an agreement has been fully executed by the parties. Unless otherwise approved by Brunswick County, the contractor must begin performing services within thirty (30) days after an agreement is signed.

9. INSURANCE

Contractor, and any of its approved subcontractors, must procure and maintain in full force and effect during the term of any agreement with Brunswick County, or the renewal of any agreement with Brunswick County, the insurance coverage set forth in the Minimum Insurance Requirements attached hereto and incorporated herein by reference.

In the event contractor, or any of its approved subcontractors, fails to maintain insurance as outlined herein, Brunswick County may, at its option, obtain the required insurance at the expense of the contractor.

10. PROPOSAL CONDITIONS

10.1 Submission of a proposal indicates explicit acceptance by the contractor of the terms and conditions contained in this Request for Proposals and any attachments hereto. Brunswick County reserves the right to reject, without prejudice or explanation, any or all proposals. Brunswick County reserves the right to waive informalities or to amend the specifications of this Request for Proposals and request new proposals at any time prior to the award of a contract. All decisions of Brunswick County shall be final and binding.

10.2 The contractor shall supply the following:

- A single point of contact through proposal acceptance. Brunswick County will communicate solely through this contact regarding all issues relating to the proposal through acceptance.
- A single Project Manager, after acceptance, dedicated and available for the entire duration of the project. The Project Manager may only be replaced upon approval by, or at the request of Brunswick County. At a minimum, the contractor's Project Manager shall be responsible for oversight and management of the Scope of Work as outlined above.

11. CONSIDERATION OF WITHDRAWAL AND/OR REJECTION OF PROPOSAL

11.1 Withdrawal

After submission, no proposal may be withdrawn by the contractor for a period of ninety (90) days following the opening date. Until that time, the proposal will remain firm and irrevocable, and any required bond will be forfeited.

11.2 Rejection

A proposal may be rejected if the contractor fails to:

- Submit the proposal in the format specified.
- Supply the minimum information requested.
- Submit all addenda, addenda responses and templates.
- Submit the proposal by the date and time required.
- Submit a cost proposal with unbundled, detailed and itemized pricing.
- Provide truthful and accurate information in the proposal.

11.3 No Acceptance

Brunswick County reserves the exclusive right to reject any or all proposals, to waive any informalities or technical defects in proposals, and to accept any proposal deemed most favorable to Brunswick County.

11.4 Competency of Contractor

Brunswick County shall make such investigation as it deems necessary to determine the ability of the contractor to perform the work, and/or provide the services required by this Request for Proposals. Upon request by Brunswick County, the contractor shall furnish satisfactory evidence that it has the necessary facilities, ability and financial resources to fulfill the specifications and conditions of the proposal.

12. **AWARD**

Brunswick County reserves the right to award a contract, based on initial proposals received from contractors, without discussion and without conducting further negotiations. Brunswick County may also, in its sole discretion, initiate further discussions with contractors that it deems to fall within a competitive range. Award shall be made to the lowest responsive, responsible bidder unless otherwise specified. Brunswick County shall not be deemed to have finally selected a contractor until a contract has been successfully negotiated and signed by both parties.

13. **NON-DISCLOSURE OF INFORMATION**

Contractor and its agents shall treat all data and information associated with this Request for Proposals, including, without limitation, the Request for Proposals, all reports, recommendations, specifications and other data as confidential. Contractor and its agents shall not disclose or communicate any information to a third party or use such information in advertising, propaganda and/or in another job or jobs, unless prior written consent is obtained from Brunswick County.

14. NORTH CAROLINA PUBLIC RECORDS

All proposals received by Brunswick County shall be considered public information subject to lawful disclosure under North Carolina Public Records Law. Any proposal material deemed by the contractor to constitute either proprietary or trade secret material shall be designated as such, and each page or section of a page containing such material shall be so marked by the contractor. In addition, it shall be the sole responsibility of the contractor to demonstrate to a court of competent jurisdiction that their designation is proper. Brunswick County shall not make public any material determined by a court of competent jurisdiction to be proprietary or trade secret. Contractor hereby agrees to indemnify and hold Brunswick County harmless from any and all claims, suits, damages, penalties or expenses arising out of contractor's proprietary or trade secret designation.

15. PROJECT DELIVERABLES

Contractor shall complete the following:

- Weekly or bi-weekly project conference calls to be held throughout the project, with meeting agendas and minutes provided by the contractor.
- Ongoing action item list maintained by the contractor.
- Template and procedure for formal reporting of issues provided by the contractor.
- Final Report that summarizes the engagement.

16. ADDITIONAL SERVICES

Brunswick County reserves the right to negotiate additional services with contractor at any time after the initial contract award.

17. CERTIFICATION

Contractor hereby certifies that it has carefully examined this Request for Proposals and all attachments hereto, that it understands and accepts all terms and conditions and the scope of work, and that it has knowledge and expertise to complete the project. By submitting a proposal, contractor certifies that its proposal is in all respects fair and without collusion or fraud.

FORM OF AGREEMENT

NORTH CAROLINA

SERVICES AGREEMENT

BRUNSWICK COUNTY

THIS SERVICES AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County”), party of the first part, and {Vendor Name}, (hereinafter referred to as “Provider”), party of the second part.

WITNESSETH:

1. SERVICES; FEES

The services to be performed under this Agreement (hereinafter referred to collectively as “Services”) and the agreed upon fees for said Services are set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. TERM OF AGREEMENT AND TERMINATION

The term of this Agreement begins on {Effective Date} (the “Effective Date”) and continues in effect until {Expiration Date}, unless sooner terminated as provided herein. The County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to the Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to the County showing in detail the Services performed under this Agreement through the effective date of termination. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in the immediate termination of the Agreement. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property, or if Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

3. NONAPPROPRIATION

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

4. COMPENSATION

The County agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County and include detail of all Services delivered or performed under the terms of this Agreement. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

5. INDEPENDENT CONTRACTOR

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

6. PROVIDER REPRESENTATIONS

- (1) Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;

- (2) Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (3) No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- (4) Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- (5) Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- (6) The Services provided by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including without limitation non-compete agreements);
- (7) Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services;
- (8) Provider acknowledges that if any specific licenses, certifications or related credentials are required in its performance of the Services, it will ensure that such credentials remain current and active and not in a state of suspension or revocation; and
- (9) Provider shall ensure that whenever its employees or agents are on County property, they will strictly abide by all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. Such rules, regulations, policies and security procedures shall include, but not be limited to: (i) not possessing any controlled substances; (ii) smoking only in designated smoking areas, if any; and (iii) not possessing weapons, except for weapons possessed by law enforcement officials.

7. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgment that federal financial assistance may be used to fund all or a portion of the Agreement. Provider will comply with all applicable federal laws, regulations, executive orders, federal government policies, procedures, and directives.

8. DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA

Provider shall be solely responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of Provider or its subcontractors. In the event that Provider causes damage to the County's equipment or

facilities, Provider shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to such damage.

9. NON-ENDORSEMENT AND PUBLICITY

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

10. NON-EXCLUSIVITY

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement.

11. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

12. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Providers who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

13. PROCUREMENT OF RECOVERED MATERIALS

- (1) In the performance of this Agreement, Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
 - i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - ii. Meeting Agreement performance requirements; or
 - iii. At a reasonable price.

- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) Provider also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

14. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- (1) *Definitions.* As used in this section, the terms Backhaul; Covered Foreign Country; Covered Telecommunications Equipment or Services; Interconnection Arrangements; Roaming; Substantial or Essential Component; and Telecommunications Equipment or Services have the meanings as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim) –
- (2) *Prohibitions.*
 - i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - ii. Unless an exception in paragraph (3) of this section applies, Provider and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the federal government to:
 - a. Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology as part of any system; or
 - d. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system, or as Critical Technology as part of any system.

(3) *Exceptions.*

- i. This clause does not prohibit contractors from providing –
 - a. A service that connects to the facilities of a third-party, such as Backhaul, Roaming, or Interconnection Arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 - 1. Are *not used* as a Substantial or Essential Component of any system;
and
 - 2. Are *not used* as Critical Technology of any system.
 - b. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

(4) *Reporting requirement.*

- i. In the event Provider identifies Covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system, or as Critical Technology as part of any system, during Agreement performance, or Provider is notified of such by a subcontractor at any tier or by any other source, Provider shall report the information in paragraph (4)ii. of this section to County, unless procedures for reporting the information are established elsewhere in this Agreement.
- ii. Provider shall report the following information pursuant to paragraph (4)i. of this section:
 - a. Within one (1) business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within ten (10) business days of submitting the information in paragraph (4)ii.a. of this section: Any further available information about mitigation actions undertaken or recommended. In addition, Provider shall describe

the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services, and any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

(5) *Subcontracts*. Provider shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

15. DOMESTIC PREFERENCE FOR PROCUREMENTS

As appropriate, and to the extent consistent with law, Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

16. ACCESS TO RECORDS

The following access to records requirements apply to this Agreement:

- (1) Provider agrees to provide County, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) Provider agrees to provide any authorized representatives of the federal government access to construction or other work sites pertaining to the work being completed under the Agreement.
- (4) In compliance with Section 1225 of the Disaster Recovery Act of 2018, County and Provider acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the federal government or the Comptroller General of the United States.

17. SUSPENSION AND DEBARMENT

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Provider is required to verify that none of Provider's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by County. If it is later determined that Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the federal government and County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

18. INDEMNIFICATION

Provider shall defend, indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against County or which County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Provider's actions pertaining to this Agreement.

20. NO OBLIGATION BY FEDERAL GOVERNMENT

The federal government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-federal entity, Provider, or any other party pertaining to any matter resulting from the Agreement.

21. MINORITY BUSINESS ENTERPRISES

If subcontracts are to be let, Provider is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

22. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

23. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

24. REMEDIES

- (1) **RIGHT TO COVER.** If Provider fails to meet any completion date or resolution time set forth, due to no fault of County, the County may take any of the following actions

with or without terminating this Agreement, and in addition to, and without limiting, any other remedies it may have:

- i. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement; and
 - ii. Deduct any and all expenses incurred by County in obtaining or performing the Services from any money then due or to become due Provider and, should the County's cost of obtaining or performing the Services exceed the amount due Provider, collect the amount due from Provider.
- (2) **RIGHT TO WITHHOLD PAYMENT.** County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- (3) **SETOFF.** Each party shall be entitled to set off and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.
- (4) **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.
- (5) **NO SUSPENSION.** In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

25. TAXES

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

26. HEALTH AND SAFETY

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

27. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, Provider agrees as follows:

- (1) Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) Provider will, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) Provider will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Provider's legal duty to furnish information.
- (4) Provider will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Provider's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) Provider will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) Provider will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the

administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of Provider's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Provider may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) Provider will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Provider will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Provider becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Provider may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity

clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

28. COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT

- (1) *Provider.* If applicable, Provider shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3, as may be applicable, which are incorporated by reference into this Agreement.
- (2) *Subcontracts.* If applicable, Provider or subcontractor shall insert in any subcontracts the clause above and such other clauses as may be required, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) *Breach.* A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

29. COMPLIANCE WITH THE DAVIS-BACON ACT (AS AMENDED)

- (1) If applicable, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. Part 5, as may be applicable. Provider shall comply with 40 U.S.C. §§ 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. Part 5, as applicable.
- (2) Providers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, Providers are required to pay wages not less than once a week.

30. CLEAN AIR ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County,

the federal government, and the appropriate Environmental Protection Agency Regional Office.

- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

31. FEDERAL WATER POLLUTION CONTROL ACT

- (1) Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) Provider agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to County, the federal government, and the appropriate Environmental Protection Agency Regional Office.
- (3) Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

32. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Provider and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* County shall upon its own action or upon written request of an authorized representative of the Department of

Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Provider or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) *Subcontracts.* Provider or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act, as applicable:

- (1) Provider or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- (2) Records to be maintained under this provision shall be made available by Provider or subcontractor for inspection, copying, or transcription by authorized representatives of the federal government, including, without limitation, the Department of Labor, and Provider or subcontractor will permit such representatives to interview employees during working hours on the job.

33. COMPLIANCE WITH E-VERIFY PROGRAM

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

34. CONFIDENTIAL INFORMATION

For purposes of this Agreement, the party disclosing Confidential Information is the “Discloser,” and the party receiving Confidential Information is the “Recipient.” “Confidential Information” shall mean any nonpublic information concerning the parties’ respective businesses

including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs and know-how; (d) business information, including operations, planning, marketing interests and products; and (e) the terms of any agreement between the parties and the discussions, negotiations and proposals related thereto. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as “Confidential.” Confidential Information that is not written must be identified as confidential at the time of disclosure and confirmed in writing delivered to Recipient within fifteen (15) days of disclosure.

The restrictions regarding the use and disclosure of Confidential Information do not apply to information that is:

- (1) in the public domain through no fault of the Recipient;
- (2) within the legitimate possession of the Recipient, with no confidentiality obligations to a third party;
- (3) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure;
- (4) independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information;
- (5) disclosed with the prior written consent of the Discloser; or
- (6) required to be disclosed by law, regulation or court or governmental order, specifically including requests pursuant to the Public Records Laws of North Carolina contained in Chapter 132 of the North Carolina General Statutes. In the event Recipient receives such a request, it shall notify Discloser and Discloser shall have the opportunity to defend against production of such records at Discloser’s sole expense.

35. OWNERSHIP OF WORK PRODUCT

Should Provider’s performance under this Agreement generate documents or other work product that are specific to the Services hereunder, such documents or work product shall become the property of County and may be used by County on other projects without additional compensation to Provider.

36. NO ASSIGNMENT WITHOUT CONSENT

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent

of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

37. GOVERNING LAW AND VENUE

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

38. DISPUTE RESOLUTION

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

39. GOVERNMENTAL IMMUNITY

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

40. NON-WAIVER

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

41. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

42. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

43. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as

the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

44. AMENDMENTS

Amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall not be valid unless in writing and signed by authorized agents of both Provider and County.

45. NOTICES

- (1) **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- (2) **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- (3) **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

i. For the County: Brunswick County Manager
P.O. Box 249
Bolivia, NC 28422
Fax: 910-253-2022

ii. For the Provider: {Vendor Name}
{Vendor Address}
{Vendor City}, {Vendor State or Territory} {Vendor Zip}

46. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S. § 66-58.1 et seq.) and the Uniform Electronic Transactions Act

(N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

BRUNSWICK COUNTY

Clerk to the Board

By: _____
Chairman, Board of Commissioners

[SEAL]

{VENDOR NAME}

By: _____

Printed Name: { Vendor Signatory Name }

Title: { Vendor Signatory Title }

Date: _____

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Aaron C. Smith, Director of Fiscal Operations
Brunswick County, North Carolina

APPROVED AS TO FORM

Robert V. Shaver, Jr., County Attorney /
Bryan W. Batton, Assistant County Attorney

EXHIBIT “A”
PROPOSAL/STATEMENT OF WORK/SCOPE OF SERVICES



BRUNSWICK COUNTY MINIMUM INSURANCE COVERAGE REQUIREMENTS

At contractor's expense, contractor shall procure and maintain the following recommended lines of insurance according to the scope of work. The County may choose to elect higher or lower coverages according to the work performed. Contractors must be insured by a licensed agent in North Carolina and rated A-VII or better by A.M. Best.

A. COMMERCIAL GENERAL LIABILITY

Covering all operations involved in this Agreement.

\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury Limit
\$ 5,000 Medical Expense Limit

B. WORKERS' COMPENSATION

Statutory limits covering all employees, including Employer's Liability with limits of:

\$500,000 Each Accident
\$500,000 Disease - Each Employee
\$500,000 Disease - Policy Limit

C. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 Combined Single Limit – Any Auto

D. PROFESSIONAL LIABILITY

\$1,000,000 Per Occurrence

E. POLLUTION LIABILITY INSURANCE

\$1,000,000 Per Occurrence

When a contractor is required to bind pollution/environmental coverage, the contractor must provide evidence of continuation or renewal of liability insurance for a period of three (3) years following termination of the agreement.

ADDITIONAL INSURANCE AND INDEMNIFICATION REQUIREMENTS

- A. Contractor agrees to defend, indemnify, and hold harmless Brunswick County, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Contractor, its employees or agents. Contractor further agrees to investigate, handle, respond to, defend and dispose of same at its sole expense and agrees to bear all other costs and expenses related thereto.

The Contractor's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

BRUNSWICK COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS
ADDITIONAL INSURED UNDER CONTRACTOR'S GENERAL LIABILITY INSURANCE.

- A. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- B. Contractor shall have no right of recovery or subrogation against Brunswick County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- C. Brunswick County shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- D. All certificates of insurance must provide that the policy or policies shall not be changed or cancelled without at least thirty (30) days prior written notice.
- E. The Certificate of Insurance should note in the Description of Operations the following:
Department: _____
Contract #: _____
- F. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, hold harmless and defend Brunswick County for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- G. In the event Contractor receives Notice of Cancellation of Insurance required pursuant to this Agreement, Contractor shall immediately cease performance of all services and shall provide Notice to Brunswick County's Legal/Risk Management personnel within twenty-four (24) hours.
- H. Certificate Holder shall be listed as follows;
ATTENTION: Brunswick County Risk Manager
30 Government Center Dr. NE
P.O. Box 249
Bolivia, NC 28422
- I. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

FORM OF PROPOSAL

Note to contractors: All costs proposed are to be inclusive of labor, materials, equipment, incidentals, etc. necessary to provide the scope of services outlined in this RFP for the below listed hourly rates. Rates proposed are also to include all expenses, including general overhead, equipment, field overhead, profit, travel per diem, all necessary food, water, restroom and lodging facilities needed to provide these services.

Stream Name	LF located outside floodplain	LF located Inside floodplain	Approximate LF	Job Description	Y (Lat)	X (Long)	Cost / Work inside of floodplain	Cost / Work outside of floodplain	TOTAL COST FOR STREAM
Morgan Branch	0	8000	8000	Stream debris removal	34.185415	-78.070700	\$	\$	\$
Scotts Branch	0	7100	7100	Stream debris removal	34.000143	-78.226017	\$	\$	\$
Cool Run	6600	1000	7600	Stream debris removal	33.954832	-78.465659	\$	\$	\$
Shallotte River	3000	0	3,000	Stream debris removal	33.948036	-78.392003	\$	\$	\$
Willet Branch	1700	1,400	3,100	Stream debris removal	34.100272	-78.086272	\$	\$	\$
Swain Branch	2900	0	2,900	Stream debris removal	34.079616	-78.052139	\$	\$	\$
Goose Creek	0	1,900	1,900	Stream debris removal	33.909044	-78.39647	\$	\$	\$

CONTRACTOR INFORMATION

Name of Company _____

Address _____

Phone No. _____ **Fax No.** _____

E-Mail Address _____

Federal I.D. No. _____

SDBE, Minority or Woman Owned Business Enterprise _____ **Yes** _____ **No**

Proposal Submitted By: _____
(Printed Name)

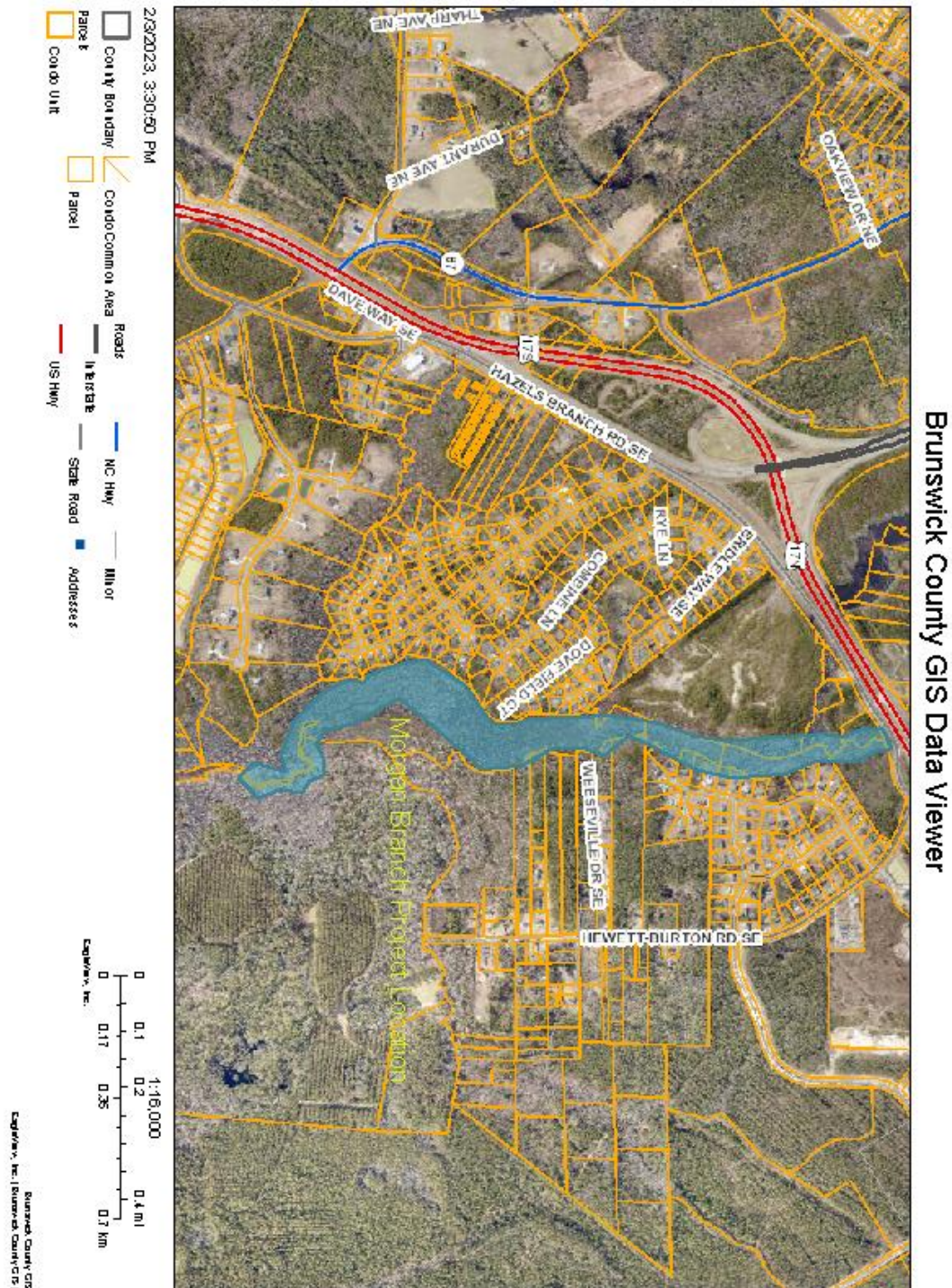
(Signature)

Title: _____

Date: _____

MAPS

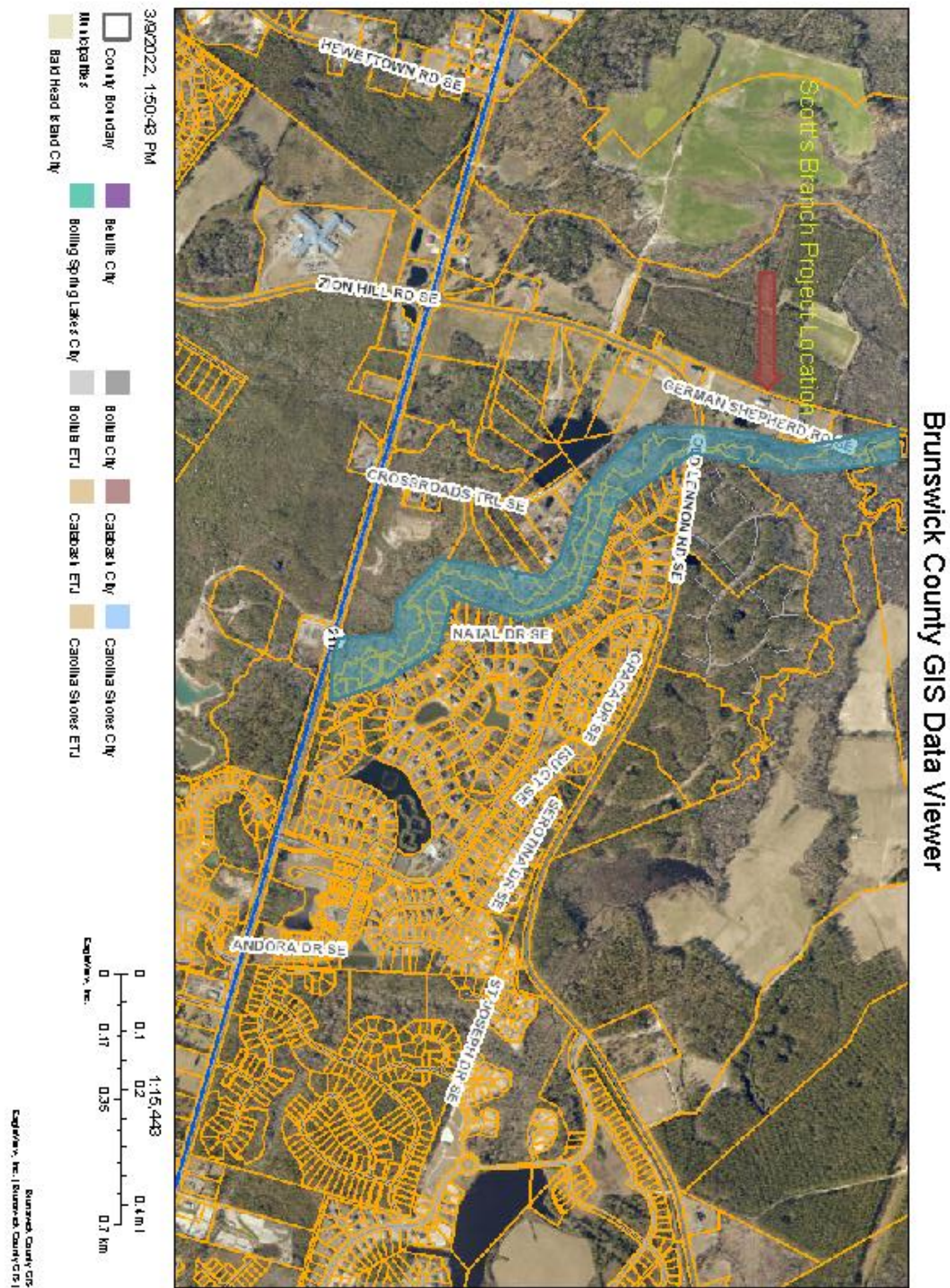
Morgan Branch Approximate Project Location:



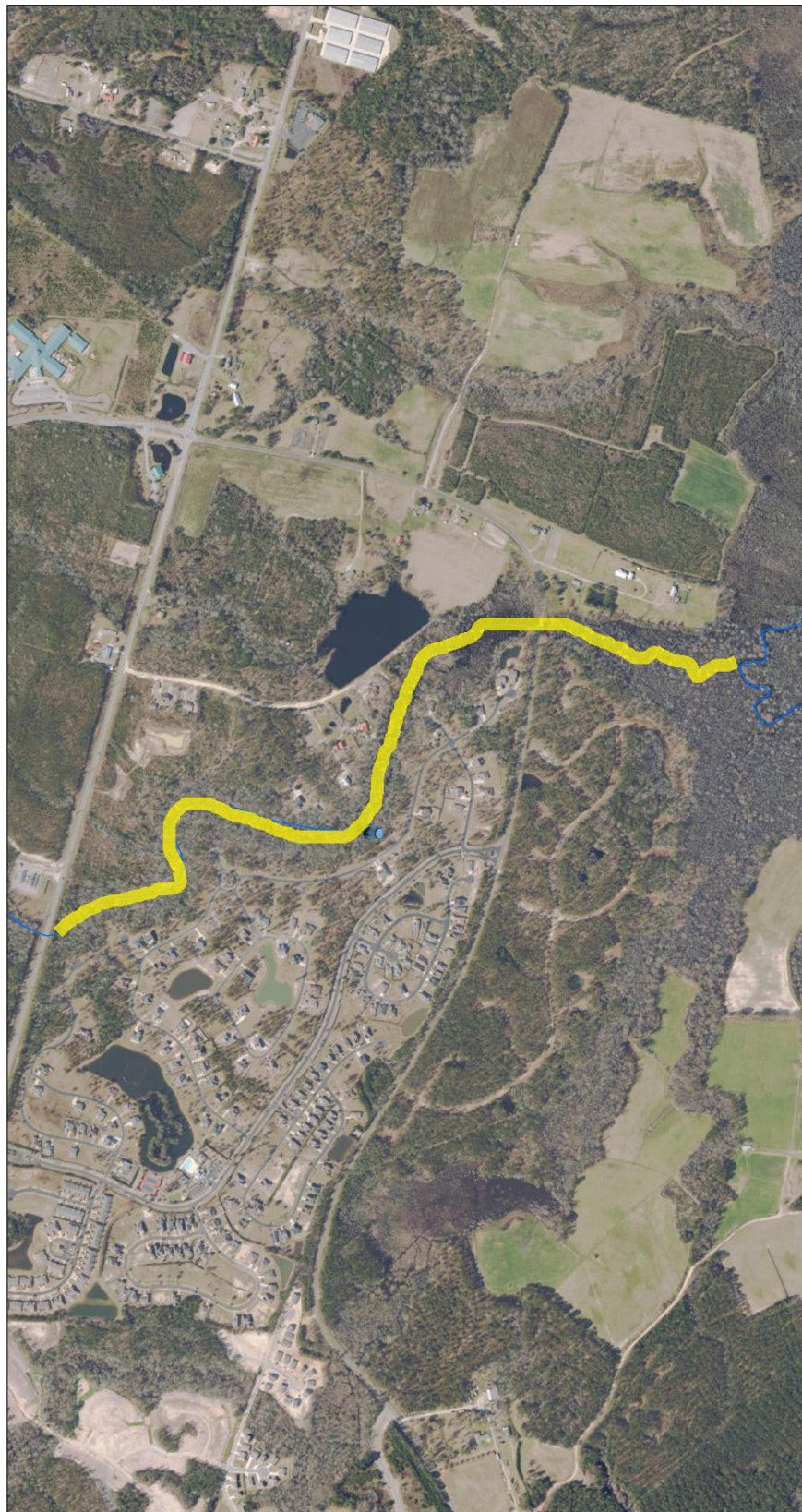
NC Surface Water Classifications



Scotts Branch Approximate Project Location:

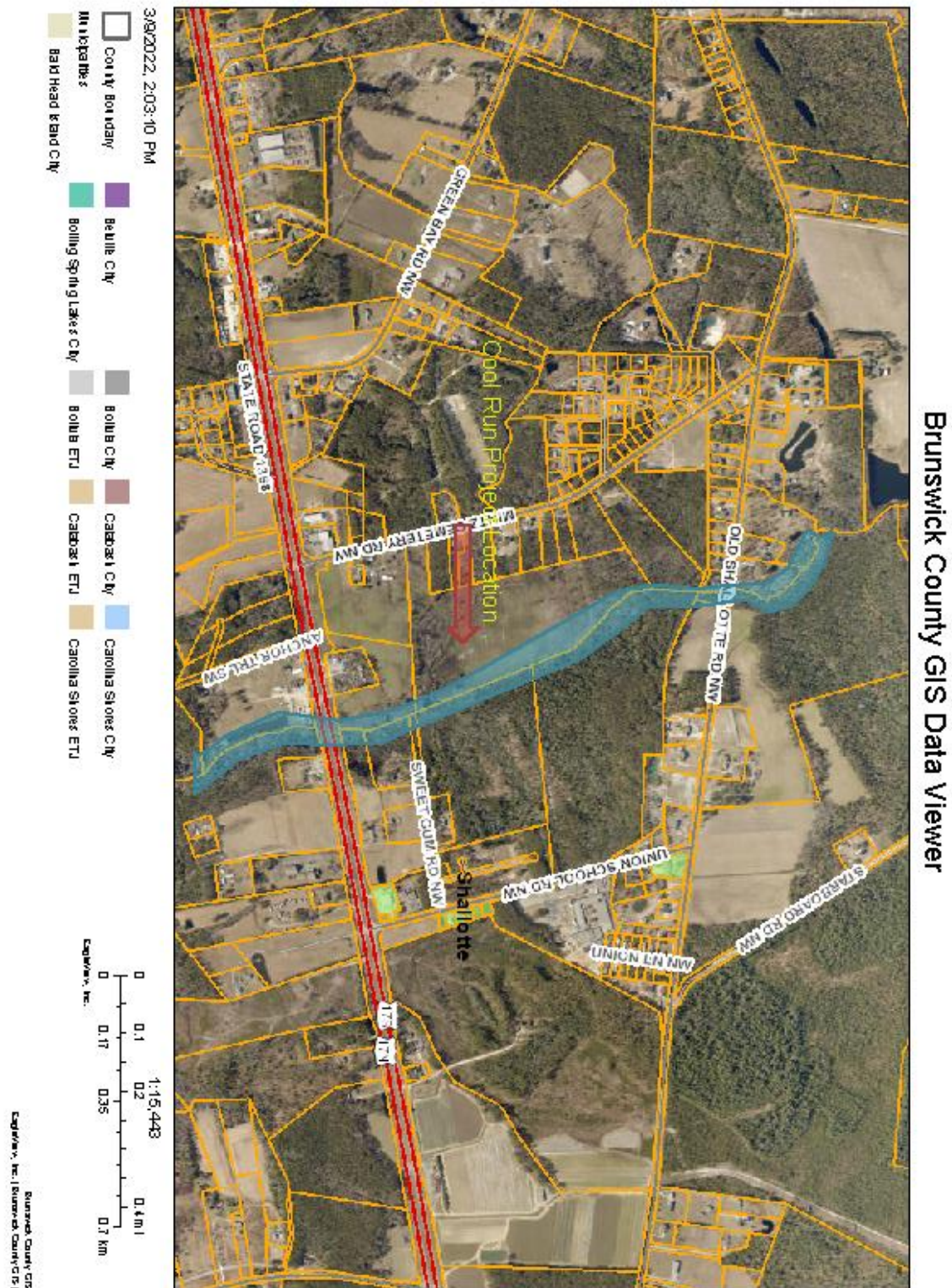


NC Surface Water Classifications

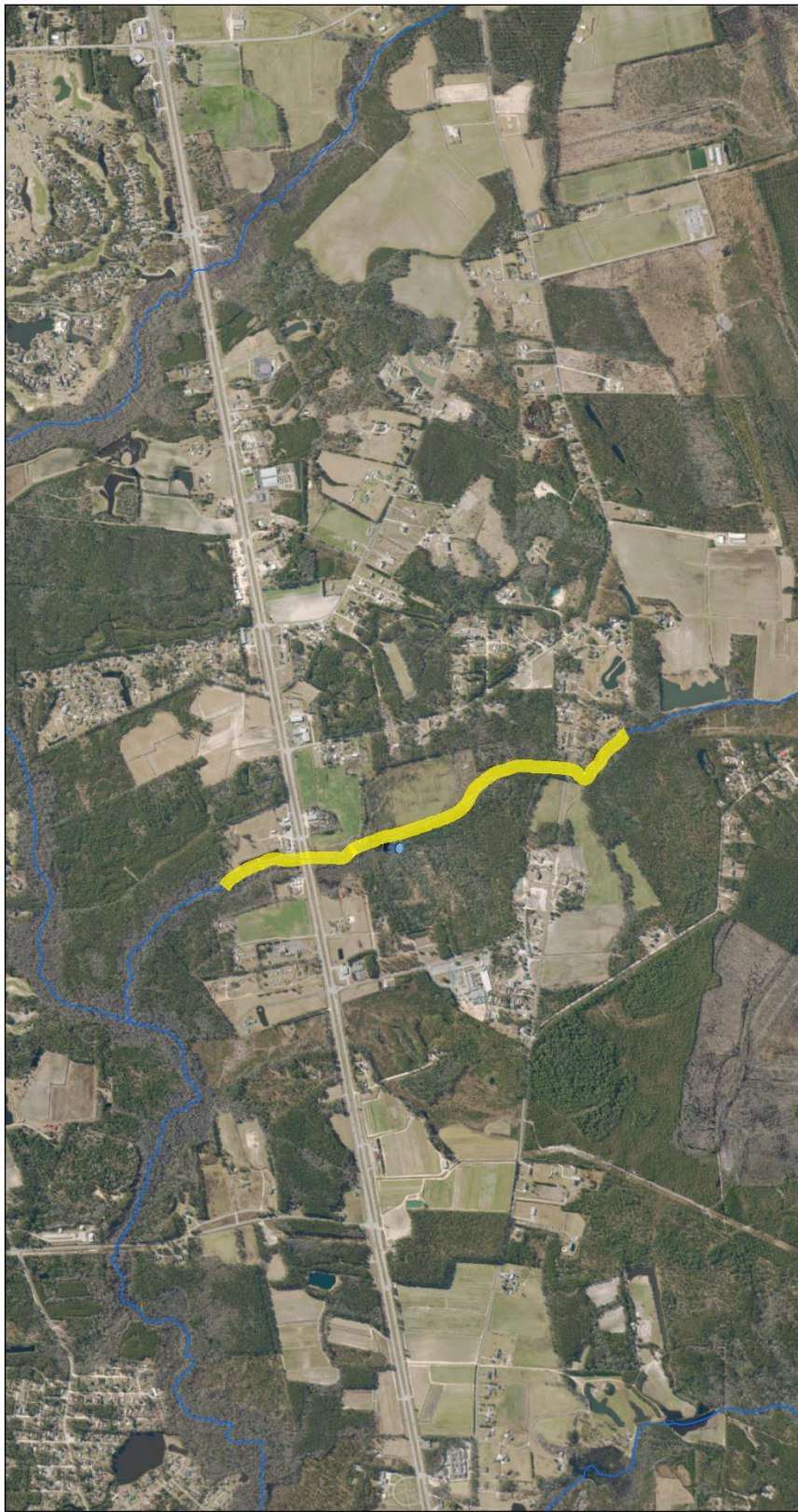


February 3, 2023

Cool Run Approximate Project Location:



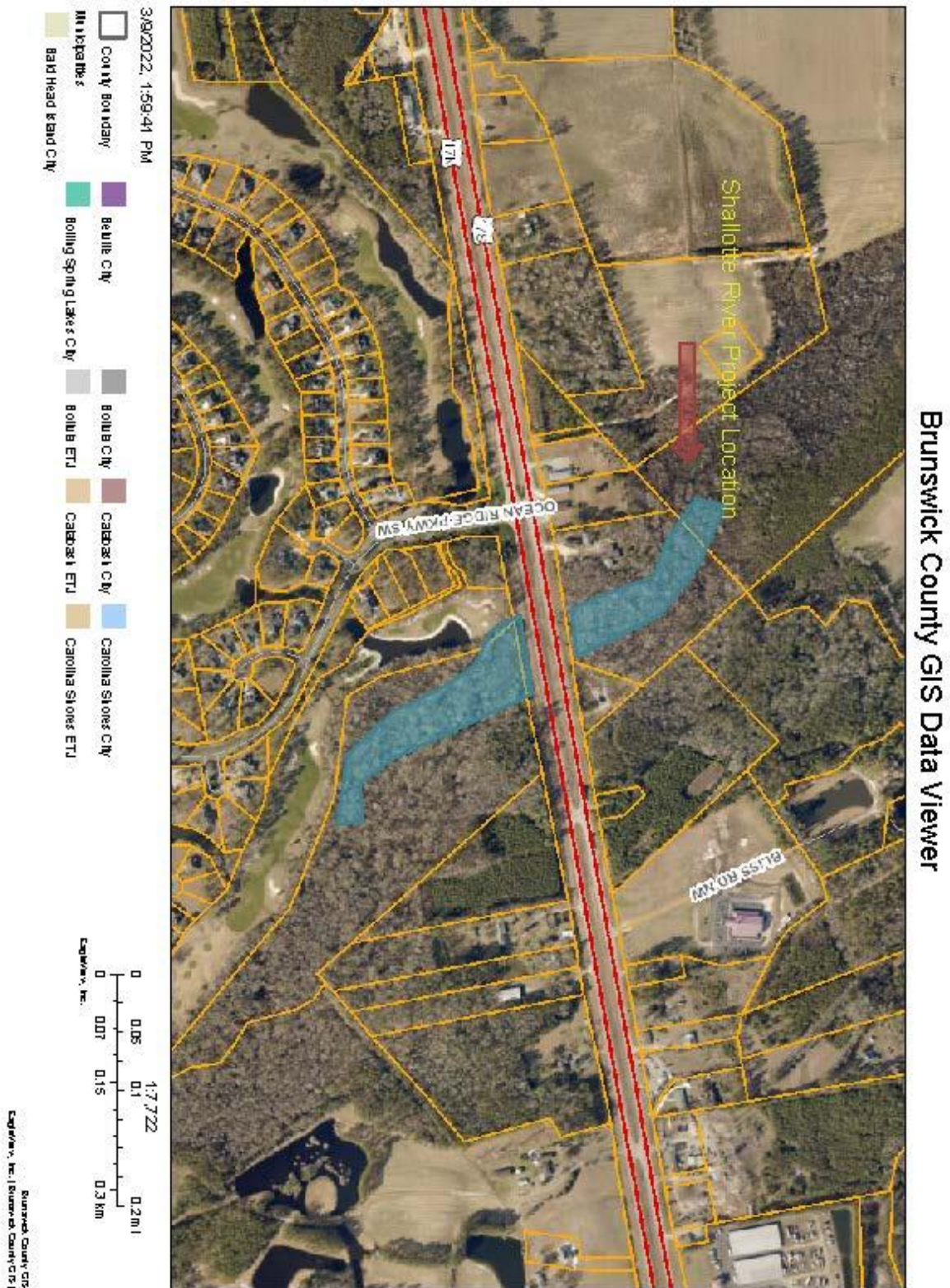
NC Surface Water Classifications



February 3, 2023

1:19,183
0 0.2 0.4 0.8 mi
0 0.3 0.6 1.2 Km
NCDENR - Division of Water Resources, NC CGIA,
Earthstar Geographics

Shallotte River Approximate Project Location:



NC Surface Water Classifications



February 3, 2023

1:9,591
0 0.1 0.2 0.3 0.4 mi
0 0.15 0.3 0.6 km
NCDENR - Division of Water Resources, NC CGIA,
Maxair

Brunswick County GIS Data Viewer



NC Surface Water Classifications



February 6, 2023

RFP – 2022 Brunswick County Streamflow Rehabilitation Assistance Program

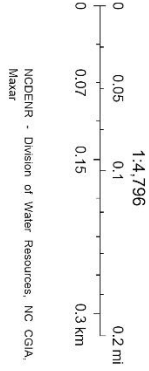
PAGE 45



NC Surface Water Classifications



February 6, 2023



RFP – 2022 Brunswick County Streamflow Rehabilitation Assistance Program



NC Surface Water Classifications



February 6, 2023

1:4,796
0 0.05 0.1 0.2 mi
0 0.07 0.15 0.3 km

NC DENR - Division of Water Resources, NC CGIA,
Maxar

WEEKLY PROGRESS REPORT

BRUNSWICK COUNTY DEBRIS REMOVAL PROGRESS REPORTING FORM
(TO BE FILED WEEKLY WITH BRUNSWICK COUNTY SOIL AND WATER CONSERVATION DISTRICT)

COMPANY INFORMATION	
COMPANY NAME	
ADDRESS	
STATE	ZIP
PHONE	
PROJECT INFORMATION	
PROJECT NAME	
START DATE	PROJECTED END DATE
PROGRESS REPORTING DATE	THRU
CREW INFORMATION	
NUMBER OF CREWS ON SITE	
CREW FOREMAN'S NAME(S)	
FORMAN'S PHONE NUMBER(S)	
NUMBER OF WORKERS ON SITE	
JOB PERFORMANCE	
NUMBER OF DAYS WORKED	
PERCENTAGE OF WORK COMPLETE	
ACCIDENT REPORT	
HAVE THERE BEEN ANY EMPLOYEES INJURED DURING THIS REPORTING PERIOD?	
YES NO	
IF YES PLEASE LIST EMPLOYEES NAME, NATURE OF INTURY AND TREATMENT REQUIRED.	
OTHER NOTES	